

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

**Sep 27, 2022**

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

vs.

LEE M. HERRING and SHEILA M.  
HERRING, husband and wife, dba L&S  
ORCHARDS; STATE OF WASHINGTON,  
DEPARTMENT OF LABOR &  
INDUSTRIES; BROOK LAKE  
ORCHARDS, a Washington corporation;  
LOIS RALSTON; RICK ARMSTRONG  
and CHRISTINE ARMSTRONG, husband  
and wife; and DAVE PONOZZO and  
RANDI PONOZZO, husband and wife,

Defendants.

No. 2:22-cv-00036-MKD

ORDER GRANTING MOTION FOR  
DEFAULT JUDGMENT; DEFAULT  
JUDGMENT AND ORDER OF  
FORECLOSURE

**ECF No. 16**

Before the Court is Plaintiff's Motion for Default Judgment and Order of Foreclosure, ECF No. 16. This matter was submitted for consideration without oral argument. The Court has considered the briefing, the record, and is fully informed. No Defendant has appeared, responded to the Order of Default issued by the Clerk of Court on June 13, 2022 (ECF No. 15), or otherwise participated in

DEFAULT JUDGMENT AND ORDER OF FORECLOSURE - 1

1 the pending action. There being no reason for further delay and for the below  
2 reasons, Plaintiff's Motion for Default Judgment and Order of Foreclosure (ECF  
3 No. 16) is **GRANTED**.

## 4 **BACKGROUND**

### 5 **A. Factual History**

6 Defendants Lee M. Herring and Sheila M. Herring d/b/a L&S Orchards  
7 (Defendants Herring) executed and delivered to FSA promissory notes dated May  
8 31, 2013 (Fund Code 41, Loan No. 03) and February 16, 2016 (Fund Code 44,  
9 Loan No. 11). ECF No. 1, Exhibits A, R.

10 The 2013 promissory note was in the amount of \$300,000 and secured by (1)  
11 a mortgage of real estate in Grant County, Washington, identified as Assessor's  
12 Tax Parcel No. 171179000, owned by Defendants Herring (Auditor's File  
13 Nos. 1317881 and 1327144<sup>1</sup>), and (2) nine security agreements encumbering  
14 various farm products, supplies, and farm equipment. ECF No. 1, Exhibits A–K;  
15 ECF No. 18. FSA's security interests from these security agreements were  
16 perfected by two UCC-1 financing statements. The first financing statement was

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17  
18  
19 <sup>1</sup> The mortgage was re-recorded to include dates missing from the original recorded  
20 document. ECF No. 1, Exhibit B at 1; ECF No. 18.

1 filed on October 31, 2012, under File No. 2012-305-3833-6.<sup>2</sup> ECF No. 1,  
2 Exhibit L. The second was filed on June 17, 2013, under File No. 2013-170-9187-  
3 7.<sup>3</sup> ECF No. 1, Exhibit P. The mortgage and security agreements were recorded in  
4 the State of Washington. ECF No. 1, Exhibits B–K; ECF No. 18.

5 The 2016 promissory note was in the amount of \$30,300 and secured by a  
6 second mortgage of real estate in Grant County, Washington, identified as  
7 Assessor’s Tax Parcel No. 171179000, owned by Defendants Herring (Recording

8  
9 <sup>2</sup> This financing statement defined the collateral, in relevant part, as “Crops,  
10 livestock, supplies farm products, and farm and other equipment and those to be  
11 acquired in the future.” ECF No. 1, Exhibit L. Amendments to this financing  
12 statement were filed on June 13, 2013 (as File No. 2013-164-7809-9) and July 19,  
13 2017 (as File No. 2017-200-6973-9). ECF No. 1, Exhibits M, O. A continuation  
14 to this financing agreement was filed on July 19, 2017 (as File No. 2017-200-6958-  
15 6). ECF No. 1, Exhibit N.

16 <sup>3</sup> This financing statement defined the collateral as “Irrigation pumps, Buried  
17 mainline 4500 feet PVC pipe, 3 Wind machines,” with descriptions of three  
18 discrete irrigation pumps and three discrete wind machines. ECF No. 1, Exhibit P  
19 at 2. A continuation to this financing agreement was filed on April 9, 2018 (as File  
20 No. 2018-099-3219-0). ECF No. 1, Exhibit Q.

1 No. 1359071). ECF No. 1, Exhibits R, S. This mortgage was also recorded in the  
2 State of Washington. ECF No. 1, Exhibit S.

3 Defendants Herring are in monetary default on the 2013 promissory note  
4 (“loan #41-03”) and on an undescribed promissory note (“loan #44-02”) for  
5 delinquency on payments, and their account is in non-monetary default. ECF  
6 No. 1, Exhibit T at 2. Defendants Herring filed for Chapter 7 bankruptcy on  
7 March 16, 2018. Petition, In re Herring, Ch. 7 Case No. 18-705 (Bankr. E.D.  
8 Wash. 2018), ECF No. 1. On August 13, 2018, FSA obtained an order permitting  
9 FSA to initiate foreclosure proceedings against the real property at Tax Parcel  
10 No. 171179000 and the “farm equipment and titled vehicles . . . identified in the  
11 March 6, 2017 security agreement.” Order Granting Motion for Relief from Stay,  
12 In re Herring, Ch. 7 Case No. 18-705 (Bankr. E.D. Wash. 2018), ECF No. 54. One  
13 week later, FSA notified Defendants Herring by certified mailing that all debts  
14 were due within 30 days or the United States would foreclose on the security  
15 instruments securing those debts. ECF No. 1, Exhibit T.

16 Defendant State of Washington, Defendant Ralston, Defendants Armstrong,  
17 Defendants Ponozzo, and Defendant Brook Lake Orchards (hereinafter  
18 “Lienholder Defendants”) are believed to claim interests in the real property at  
19 issue here. Defendant State of Washington’s claim is valued at \$949.05 pursuant  
20 to warrant no. 0321836, which was entered on September 22, 2017 in Grant

1 County Superior Court case no. 17-2-01190-4. ECF No. 1 at 5, ¶ 12. The other  
2 Lienholder Defendants asserted their claim(s) in Grant County Superior Court case  
3 no. 17-2-00460-6; this matter was reportedly dismissed without entry of judgment  
4 on December 3, 2018, and the status and value of this claim is unknown. ECF  
5 No. 1 at 5, ¶ 13. Of note, Defendants Herring were granted an order of discharge  
6 in their bankruptcy case on October 15, 2018. Order of Discharge, In re Herring,  
7 Ch. 7 Case No. 18-705 (Bankr. E.D. Wash. 2018), ECF No. 61.

8 Under the terms of both FSA mortgages, the proceeds of foreclosure sale  
9 shall be applied in the following order as payment thereof:

- 10 “(a) costs and expenses incident to enforcing or complying with this  
11 instrument,  
12 (b) any prior liens required by law or a competent court to be so paid,  
13 (c) the debt evidenced by the note and all other debt to the  
14 Government secured by this instrument,  
15 (d) inferior liens of record required by law or a competent court to be  
16 so paid,  
17 (e) at the Government’s option, any other debt of Borrower to the  
18 Government, and  
19 (f) any balance to Borrower.”

20 ECF No. 1, Exhibit B at 5, ¶ 30; Exhibit S at 5, ¶ 30; ECF No. 18 at 5, ¶ 30.

1           **A. Procedural History**

2           On March 3, 2022, Plaintiff filed this foreclosure action to collect on an  
3 indebtedness owed by Defendants Lee M. Herring and Sheila M. Herring, husband  
4 and wife (Defendants Herring) through foreclosure of security instruments held by  
5 FSA, including real property identified as Assessor's Tax Parcel No. 171179000  
6 (Real Property) and personal property described as "Wind machines, [i]rrigation  
7 equipment including but not limited to irrigation pumping equipment, irrigation  
8 pumps, irrigation pipes, and other irrigation equipment" (Personal Property). ECF  
9 No. 1. Plaintiff moved for entry of default on June 9, 2022, and the Clerk of Court  
10 entered an order of default on June 13, 2022. ECF Nos. 13, 15. Plaintiff now  
11 moves for a default judgment and order of foreclosure. ECF No. 16.

12                           **DISCUSSION**

13           **A. Jurisdiction**

14           "When entry of judgment is sought against a party who has failed to plead or  
15 otherwise defend, a district court has an affirmative duty to look into its  
16 jurisdiction over both the subject matter and the parties" to "determine whether it  
17 has the power . . . to enter the judgment in the first place." *In re Tuli*, 172 F.3d  
18 707, 712 (9th Cir. 1999) (citations omitted).

19           The Court has subject matter jurisdiction over this matter as a civil action  
20 commenced by the United States. 28 U.S.C. § 1345.

1 All facts currently before the Court indicate that the Court has personal  
2 jurisdiction over all Defendants. Personal jurisdiction in federal courts is  
3 ordinarily determined by the law of the state in which the federal court sits. *Ranza*  
4 *v. Nike, Inc.*, 793 F.3d 1059, 1068 (9th Cir. 2015). Washington state law permits  
5 federal courts to exercise personal jurisdiction over defendants to the full extent  
6 permitted by constitutional due process and Washington’s long-arm statute. *Shute*  
7 *v. Carnival Cruise Lines*, 783 P.2d 78, 79–80 (Wash. 1989); Wash. Rev. Code  
8 § 4.28.185. Personal jurisdiction over the state defendant has been established by  
9 service of the summons. Fed. R. Civ. P. 4(j)(2)(B)–(k); Wash. Rev. Code  
10 § 4.92.020; Off. of the Atty Gen., *Electronic Service of Original Summons &*  
11 *Complaint*, [https://www.atg.wa.gov/electronic-service-original-summons-](https://www.atg.wa.gov/electronic-service-original-summons-complaint)  
12 [complaint](https://www.atg.wa.gov/electronic-service-original-summons-complaint) (last visited Sept. 2, 2022). Defendants Herring, Defendant Ralston,  
13 Defendants Rich and Christine Armstrong, and Defendants Dave and Randi  
14 Ponozzo are alleged to be residents of Washington. ECF No. 1 at 2, ¶ 2. Plaintiff  
15 identifies Defendant Brook Lake Orchards as a Washington corporation. ECF  
16 No. 1 at 1. The Real Property, in which all Defendants are believed to have an  
17 actual or potential interest, is located in this forum. Defendant Ralston, Defendants  
18 Armstrong, Defendants Ponozzo, and Defendant Brook Lake Orchards have  
19 asserted their interests in the Real Property by filing an action in a Washington  
20 court. ECF No. 1 at 5, ¶ 13; *see also* Wash. Rev. Code § 4.28.185(1)(a). It

1 appears all Defendants have sufficient minimum contacts with this forum related to  
2 the instant case to establish specific jurisdiction, even if they were not state  
3 residents. *See Walden v. Fiore*, 571 U.S. 277, 283–84 (2014).

#### 4 **B. Procedural Requirements**

5 The proper process for obtaining an entry of default and a default judgment,  
6 is prescribed by Federal Rule of Civil Procedure 55 and Local Rule 55. The Court  
7 is satisfied that Plaintiff has complied with these procedural requirements,  
8 including that Defendants were properly served with the summons and complaint  
9 under Federal Rule of Civil Procedure 4 (through Plaintiff’s filing of executed  
10 waivers of service) and that Plaintiff’s declaration supporting this motion specifies  
11 that the Defendants against whom judgment is sought are not infants nor  
12 incompetent persons and attests that the Servicemembers Civil Relief Act, 50  
13 U.S.C. chapter 50 (formerly 50 U.S.C. App. §§ 501–597b), does not apply.

#### 14 **C. Substantive Requirements**

##### 15 ***1. The Eitel Factors***

16 The Court considers certain factors in exercising its discretion to enter a  
17 default judgment: “(1) the possibility of prejudice to the plaintiff, (2) the merits of  
18 plaintiff’s substantive claim, (3) the sufficiency of the complaint, (4) the sum of  
19 money at stake in the action[,] (5) the possibility of a dispute concerning material  
20 facts[,] (6) whether the default was due to excusable neglect, and (7) the strong



1 policy underlying the Federal Rules of Civil Procedure favoring decisions on the  
2 merits.” *Eitel v. McCool*, 782 F.2d 1470, 1471–72 (9th Cir. 1986). Upon default,  
3 the Court assumes that well-pled allegations in the complaint are true. *Geddes v.*  
4 *United Fin. Grp.*, 559 F.2d 557, 560 (9th Cir. 1977) (citing *Pope v. United States*,  
5 323 U.S. 1, 12 (1944)). Each *Eitel* factor will be addressed in turn.

6 First, Plaintiff would suffer prejudice if the Court does not enter default  
7 judgment. Defendants have failed to participate in this litigation and Plaintiff has  
8 no other means of recovering payment on Defendants Herrings’ indebtedness.  
9 This factor weighs in favor of default judgment.

10 Second and third, Plaintiff’s substantive claim has apparent merit and is  
11 sufficiently well-pled. Plaintiff’s complaint adequately sets out the Defendants  
12 Herrings’ repayment obligations under the promissory notes, as secured by  
13 mortgages and security agreements, and that Defendants Herring have failed to  
14 maintain such repayments. *See NewGen, LLC v. Safe Cig, LLC*, 840 F.3d 606, 616  
15 (9th Cir. 2016). These factors weigh in favor of default judgment.

16 Fourth, the sum of the money that Plaintiff requests on default judgment  
17 (\$341,658.71), while significant, is roughly in line with the amount of the original  
18 FSA loans (\$330,300). *See* ECF No. 16 at 4–5, 10. While a large sum of money  
19 may weigh in favor of decision on the merits, the amount at stake here directly  
20 flows from the loan agreements Defendants Herring executed then breached by

1 nonpayment. Further, Plaintiff is not seeking a deficiency judgment against  
2 Defendants Herring if the value of the foreclosed property fails to cover the loan  
3 principal, accrued interest, and Plaintiff's costs of suit. ECF No. 16 at 10.  
4 Defendants Herring will only be liable for the monetary value of their agreed-upon  
5 collateral, and not one dollar more. Meanwhile, the sums of money at stake for the  
6 other Defendants is either small (\$949.05 for Defendant State of Washington) or  
7 unestablished and possibly nonexistent (for Defendants Ponozzo, Defendants  
8 Armstrong, Defendant Ralston, and Defendant Brook Lake Orchards). *See* ECF  
9 No. 1 at 5, ¶¶ 12–13. Accordingly, the fourth factor weighs in favor of default  
10 judgment.

11 Fifth, the possibility of a dispute of material fact seems remote. Again, as  
12 Defendants Herring have not responded in this case, all well-pled facts in  
13 Plaintiff's complaint are taken as true, except those relating to damages. *Geddes v.*  
14 *United Fin. Grp.*, 559 F.2d 557, 560 (9th Cir. 1977) (citations omitted). But there  
15 is further reason to find a dispute of material fact unlikely. In their bankruptcy  
16 petition, Defendants Herring acknowledged their indebtedness to FSA and that  
17 FSA's claim was secured by real estate and equipment. Petition, *In re Herring*,  
18 Ch. 7 Case No. 18-705 (Bankr. E.D. Wash. 2018), ECF No. 1 at 19–20, 32.  
19 Defendants Herring also responded to FSA's motion for relief from stay in the  
20 bankruptcy proceedings but only objected to FSA's claims over crop proceeds

1 (which are not at issue here) and FSA’s valuation of claimed farm equipment—  
2 Defendants Herring did not dispute the fact of their indebtedness or that the real  
3 property and farm equipment secured that indebtedness. Objection, In re Herring,  
4 Ch. 7 Case No. 18-705 (Bankr. E.D. Wash. 2018), ECF No. 19. The fifth factor  
5 accordingly weighs in favor of default judgment.

6 Sixth, Defendants’ default was not due to excusable neglect. Plaintiff served  
7 Defendant State of Washington with summons in accordance with federal and state  
8 procedural rules. *See* Fed. R. Civ. P. 4(j)(2); Wash. Rev. Code § 4.92.020; Off. of  
9 the Atty Gen., *Electronic Service of Original Summons & Complaint*,  
10 <https://www.atg.wa.gov/electronic-service-original-summons-complaint> (last  
11 visited Sept. 2, 2022). Plaintiff completed service of the Summons and Complaint  
12 by filing executed waivers of service for all other Defendants. *See* Fed. R. Civ.  
13 Pro. 4(d)(4). All Defendants were “properly served[] yet ignored the deadline to  
14 respond to the complaint.” *See NewGen, LLC v. Safe Cig, LLC*, 840 F.3d 606, 616  
15 (9th Cir. 2016). This factor weighs in favor of default judgment.

16 Last, the general rule is that “[c]ases should be decided upon their merits  
17 whenever reasonably possible.” *Eitel v. McCool*, 782 F.2d 1470, 1472 (9th Cir.  
18 1986) (citing *Pena v. Seguros La Comercial, S.A.*, 770 F.2d 811, 814 (9th Cir.  
19 1985)). While this factor inherently weighs against default judgment, “the mere  
20 existence of” Federal Rule of Civil Procedure 55(b) “indicates that this *Eitel* factor

1 is not alone dispositive.” *See Curtis v. Illumination Arts, Inc.*, 33 F. Supp. 3d  
2 1200, 1213 (W.D. Wash. 2014) (quoting *Microsoft Corp. v. Lopez*, No. C08-1743,  
3 2009 WL 959219, at \*3 (W.D. Wash. Apr. 7, 2009)).

4 Having reviewed the motion and record in light of the *Eitel* factors, the  
5 Court finds the entry of default judgment appropriate in this case.

## 6 **2. Lienholder Defendants’ Competing Claims**

7 Plaintiff also requests foreclosure of Lienholder Defendants’ competing  
8 claims. ECF No. 16 at 6–7.

9 “[T]he court must refer to state law to determine the relative priorities of  
10 competing liens.” *In re Van de Kamp’s Dutch Bakeries*, 908 F.2d 517, 519 (9th  
11 Cir. 1990) (citation omitted); *see also United States v. Kimbell Foods*, 440 U.S.  
12 715, 740 (1979) (holding that “absent a congressional directive, the relative  
13 priority of private liens and consensual liens arising from [federal] Government  
14 lending programs is to be determined under nondiscriminatory state laws”). Under  
15 state law, “[c]onflicting perfected security interests . . . rank according to priority  
16 in time of filing or perfection.” Wash. Rev. Code § 62A.9A-322(a)(1). Perfected  
17 interests take priority over conflicting unperfected interests. Wash. Rev. Code  
18 § 62A.9A-322(a)(2).

19 Whether or not the Lienholder Defendants’ interests are duly perfected and  
20 exempted from the bankruptcy discharge, Plaintiff’s interests take priority.

1 Plaintiff's interests in the Real Property were filed and perfected in 2013 and 2016.  
2 ECF No. 1, Exhibits B, S; ECF No. 18; Wash. Rev. Code § 7.28.230(3). Plaintiff's  
3 interest in the Personal Property was perfected by filing of financing statements in  
4 2012 and 2013. ECF No. 1, Exhibits L, P; Wash. Rev. Code § 62A.9A-310(a).  
5 From the information currently before the Court, it appears that Lienholder  
6 Defendants' interests were neither filed nor perfected before 2017, if at all. These  
7 Defendants have not appeared, responded to the complaint or Order of Default, or  
8 otherwise participated in the pending action. The Court therefore finds Lienholder  
9 Defendants' interests inferior to Plaintiff's interest and foreclosed, except to the  
10 extent that Lienholder Defendants have rights of redemption under Wash. Rev.  
11 Code chapter 6.23 or surplus funds under Wash. Rev. Code chapter 6.21.

12 **ACCORDINGLY, IT IS ORDERED:**

13 **1.** Plaintiff's Motion for Default Judgment (**ECF No. 10**) is

14 **GRANTED.**

15 **2.** Plaintiff is awarded judgment against Defendants Lee M. Herring and  
16 Sheila M. Herring in the amount of \$341,658.71 (for principal and interest  
17 accrued through June 14, 2022); plus interest to accrue at the rate of  
18 \$24.5049 per day from and after June 14, 2022, to the date of this Judgment;  
19 plus interest from the date of this Judgment at the prevailing legal rate until  
20 paid in full, for costs of suit, including but not limited to the filing fee

1 allowed pursuant to 28 U.S.C. § 2412(a)(2); any costs of enforcing the  
2 judgment; any costs incurred by FSA to bid at any foreclosure sale,  
3 including but not limited to costs of title work and appraisals; and any other  
4 relief. However, no deficiency judgment may be entered against any  
5 Defendant, nor shall any money judgment be entered against any Defendant.

6 **3.** The debt upon which this Judgment is based is secured and perfected  
7 by the following:

8 a. A mortgage recorded on June 3, 2013 under Auditor's File  
9 No. 1317881, and re-recorded on December 18, 2013 under Auditor's  
10 File No. 1327144, in the Official Records of Grant County,  
11 Washington. ECF No. 1, Exhibit B; ECF No. 18.

12 b. A mortgage recorded February 22, 2016, under Auditor's File  
13 No. 1359071, in the Official Records of Grant County, Washington.  
14 ECF No. 1, Exhibit S.

15 c. Security agreements dated October 31, 2012; December 11,  
16 2012; March 4, 2014; December 31, 2014; May 1, 2015; December  
17 28, 2015; February 16, 2016; September 6, 2016; and March 6, 2017;  
18 describing crops, livestock, supplies, other farm products, and farm  
19 and other equipment. ECF No. 1, Exhibits C–K. These agreements  
20 were perfected by the filing of a financing statement on October 31,

2012, under File No. 2012-305-3833-6, with amendments filed on June 13, 2013 (File No. 2013-164-7809-9) and July 19, 2017 (File No. 2017-200-6973-9), and a continuation statement filed on July 19, 2017 (File No. 2017-200-6958-6), and a second financing statement on June 17, 2013, under File No. 2013-170-9187-7, with a continuation statement filed on April 9, 2018 (File No. 2018-099-3219-0), all in the Official Records of Washington State, Department of Licensing. ECF No. 1, Exhibits L–Q.

4. The foregoing mortgages and security agreements cover the following described property situated in Grant County, State of Washington:

- a. The real property identified as Assessor’s Tax Parcel No. 171179000, Section 2, Township 22, Range 28, and further described by **Exhibit A** attached hereto and incorporated by reference.
- b. Personal property described as “Wind machines, Irrigation equipment including but not limited to irrigation pumping equipment, irrigation pumps, irrigation pipes, and other irrigation equipment.”

5. Said mortgages and security agreements, which constitute first and prior liens upon the property described above, are hereby foreclosed. Defendants Lee M. Herring and Sheila M. Herring, and all persons claiming by, through, or under them, are forever barred and foreclosed from asserting any right,

1 title, or interest in and to said property, except for the statutory rights of  
2 redemption under Wash. Rev. Code chapter 6.23 or surplus funds under  
3 Wash. Rev. Code chapter 6.21. The redemption period shall be 12 months.

4 **6.** The interests of all Defendants are inferior to the interest of the United  
5 States.

6 **7.** After the 10-day automatic stay of proceedings to enforce a judgment,  
7 Plaintiff may present a praecipe for an order of sale to the Clerk of Court.  
8 *See* Fed. R. Civ. P. 62(a), (f) (imposing a 14-day stay unless otherwise  
9 provided by state law for a judgment on a lien); Wash. Super. Ct. Civ.  
10 R. 62(a) (imposing a 10-day stay); *see also* 18 Wash. Prac., Real Estate §  
11 19.12 (2d ed.) (describing the enforcement process).

12 **8.** The United States Marshal for the Eastern District of Washington or his/her  
13 representative will be authorized and directed under 28 U.S.C. §§ 2001 and  
14 2002 to offer for public sale and to sell the real property and personal  
15 property listed in paragraph 4. The United States Marshal or his/her  
16 representative will be authorized free access to the real property and to take  
17 all actions necessary to preserve the real property, including, but not limited  
18 to, retaining a locksmith or other person to change or install locks or other  
19 security devices on any part of the real property, until the deed to the real  
20 property is delivered to the purchaser at the foreclosure sale.



1       **9.** The United States or any party to the suit may become a purchaser at such  
2       sale. The United States Marshal shall execute a Marshal's Certificate of  
3       Purchase to the real property in favor of the purchaser, and the purchaser  
4       will be let into possession of the premises upon production of the Marshal's  
5       Certificate of Purchase. In the event the United States or its agency, Farm  
6       Services of America of the United States Department of Agriculture, is a  
7       successful bidder on the property, it shall have the right to apply its  
8       judgment credits in lieu of cash thereon, and the United States Marshal is  
9       authorized to accept such an arrangement.

10      **10.** The terms of the Order of Sale shall be as follows:

- 11           a. The sale of the real property and personal property shall be free and  
12           clear of the interest of Defendants Lee M. Herring and Sheila M.  
13           Herring d/b/a L&S Orchards; Defendant Brook Lake Orchards;  
14           Defendant Lois Ralston; Defendants Rick Armstrong and Christine  
15           Armstrong; Defendants Dave Ponozzo and Randi Ponozzo; and  
16           Defendant State of Washington, Department of Labor & Industries,  
17           except to the extent that Defendants have a right of redemption under  
18           Wash. Rev. Code chapter 6.23 or surplus funds under Wash. Rev.  
19           Code chapter 6.21. The redemption period shall be 12 months.

- 1           b. The sale shall be subject to building lines, if established; all laws,  
2           ordinances, and governmental regulations (including building and  
3           zoning ordinances) affecting the real and personal property; and  
4           easements and restrictions of record, if any.
- 5           c. The sale shall be held at the courthouse of the county in which the real  
6           property is located, on the real property's premises, or at any other  
7           place in accordance with the provisions of 28 U.S.C. §§ 2001 and  
8           2002 and shall be announced in the Notice of Sale. The date and time  
9           for sale are to be announced by the United States Marshal or his/her  
10          representative in the Notice of Sale.
- 11          d. The Notice of Sale shall be published once a week for at least four  
12          consecutive weeks before the sale in at least one newspaper regularly  
13          issued and of general circulation in Grant County, and, at the  
14          discretion of the United States Marshal or his/her representative, by  
15          any other notice deemed appropriate. The notice shall contain a  
16          description of the real property and personal property; the time, date,  
17          and location of the sale as determined by the United States Marshal or  
18          his/her representative; the minimum bid as determined by the United  
19          States; and the terms and conditions of sale listed in subparagraphs  
20          (e)–(l) below.

- 1 e. The minimum bids for the real property and personal property will be  
2 set by the United States. If the minimum bid is not met or exceeded,  
3 the United States Marshal or his/her representative, with the  
4 concurrence of the United States, may, without further permission of  
5 this Court and under the terms and conditions in this order of sale,  
6 hold a new public sale, if necessary, and reduce the minimum bid as  
7 set by the United States, or sell to the highest bidder.
- 8 f. The successful bidder(s) for the real property and personal property  
9 shall be required to deposit at the time of the sale with the United  
10 States Marshal, or his/her representative, a minimum of ten percent  
11 (10%) of the bid, with the deposit to be made by certified or cashier's  
12 check payable to the United States District Court of the Eastern  
13 District of Washington, or cash. Before being permitted to bid at the  
14 sale, bidders shall display to the Marshal, or his/her representative,  
15 proof that they are able to comply with this requirement. No bids will  
16 be received from any person(s) who have not presented proof that, if  
17 they are the successful bidder(s), they can make the deposit required  
18 by this order of sale.
- 19 g. The balance(s) of the purchase price for the real property and personal  
20 property is to be paid to the United States Marshal within twenty (20)

1 days after the bid(s) is accepted, by a certified or cashier's check  
2 payable to the United States District Court for the Eastern District of  
3 Washington. If the bidder fails to fulfill this requirement, the deposit  
4 shall be forfeited and shall be applied to cover the expenses of the  
5 sale, including commissions due under 28 U.S.C. § 1921(c), with any  
6 amount remaining to be applied to the Judgment at issue herein. The  
7 real property and/or personal property shall again be offered for sale  
8 under the terms and conditions of this order of sale, or, in the  
9 alternative, sold to the second highest bidder if consented to by the  
10 United States.

- 11 h. The sale of the real property and personal property shall be subject to  
12 confirmation by this Court. The Marshal shall file a report of sale  
13 with the Court, together with a proposed order of confirmation of sale  
14 and proposed deed, within thirty (30) days from the date of receipt of  
15 the balance of the purchase price.
- 16 i. On confirmation of the sale, the Marshal shall execute and deliver a  
17 deed of judicial sale conveying the real property and personal property  
18 to the purchaser(s).
- 19 j. On confirmation of the sale, all interests in, liens against, or claims to,  
20 the real property, personal property, and appurtenances thereof that

1 are held or asserted by all parties to this action are discharged and  
2 extinguished, except to the extent that any Defendant has a right of  
3 redemption under Wash. Rev. Code chapter 6.23 or surplus funds  
4 under Wash. Rev. Code chapter 6.21.

5 k. On confirmation of the sale, the recorder of deeds, Grant County,  
6 Washington, shall cause transfer of the real property, personal  
7 property, and appurtenances thereof to be reflected upon that county's  
8 register of title.

9 l. The sale shall be "as is" without warranty of any kind.

10 **11.** Until the real property and personal property are sold, all Defendants shall  
11 take all reasonable steps necessary to preserve the real property (including  
12 all buildings, improvements, fixtures, and appurtenances on the real  
13 property) and personal property in their current condition, including, without  
14 limitations, maintaining a fire and casualty insurance policy. They shall  
15 neither commit waste against the real property or personal property nor  
16 cause nor permit anyone else to do so. They shall neither do anything that  
17 tends to reduce the value or marketability of the real property or personal  
18 property nor cause nor permit anyone else to do so. They shall not record  
19 any instruments, publish any notice, or take any other action (such as  
20 running newspaper advertisements or posting signs) that may directly or

1 indirectly tend to adversely affect the value of the real property or personal  
2 property or that may tend to deter or discourage potential bidders from  
3 participating in the public auction, nor shall they cause or permit anyone else  
4 to do so.

5 **12.** All persons occupying the real property shall leave and vacate the real  
6 property permanently within thirty (30) days of the date of this Order, each  
7 taking with them his or her personal property (but leaving all improvements,  
8 buildings, fixtures, and appurtenances to the real property and the personal  
9 property listed in paragraph 4). If any person fails or refuses to leave and  
10 vacate the real property by the time specified in this Order, the United States  
11 Marshal's Office is authorized to take whatever action it deems appropriate  
12 to remove such person from the premises. Specifically, the United States  
13 Marshal, or his/her designee, is authorized and directed to take all actions  
14 necessary to enter the real property at any time of the day or night and evict  
15 and eject all unauthorized persons there, including Defendants, or any other  
16 occupants. To accomplish this and to otherwise enforce this Order, the  
17 United States Marshal, or his/her designee, shall be authorized to enter the  
18 real property and any and all structures and vehicles located thereon, and to  
19 use force as necessary. When the United States Marshal concludes that all  
20 unauthorized persons have vacated, or been evicted from the property,

1 he/she shall relinquish possession and custody of the property to the United  
2 States or its designee. No person shall be permitted to return to the property  
3 and/or remain thereon without the express written authorization by the  
4 United States Marshal and/or the United States Department of Justice, or  
5 their respective representatives and/or designees. Unauthorized persons who  
6 re-enter the real property during the time this order is in effect may be  
7 ejected by the United States Marshal without further order of the Court.

8 **13.** If any person fails or refuses to remove his or her personal property from the  
9 real property, except the personal property listed in paragraph 4, by the time  
10 specified herein, the personal property remaining on the real property  
11 thereafter is deemed forfeited and abandoned, and the United States  
12 Marshal's Office is authorized to remove it and to dispose of it in any  
13 manner it deems appropriate, including sale, in which case the proceeds of  
14 the sale are to be applied first to the expenses of sale and the balance to be  
15 paid into the Court for further distribution.

16 **14.** The proceeds arising from sale are to be paid to the Clerk of this Court and  
17 applied as far as they shall be sufficient to the following items, in the order  
18 specified:

- 19 a. First, to the payment of attorneys' fees, costs, and expenses of this suit  
20 and this foreclosure;

